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CENTER FOR ENVIRONMENTAL HEALTH

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL HEALTH, a non-profit corporation,

Plaintiff,

v.

ACME UNITED CORPORATION; ADENNA INC.; BECTON, DICKINSON & COMPANY; BETTY DAIN CREATIONS, INC; DURASAFE INC.; IMPACT PRODUCTS, LLC; INVACARE CORPORATION; MICROFLEX CORPORATION; SHELBY GROUP INTERNATIONAL DBA MCR SAFETY; UNITED STATIONERS SUPPLY CO.; and defendant DOES 1 through 200, inclusive,

Defendants.

Case No. CGC-08-482792

~~[PROPOSED]~~ **CONSENT JUDGMENT RE: BECTON, DICKINSON AND COMPANY**

1. INTRODUCTION

1.1 On December 9, 2008, plaintiff the Center for Environmental Health ("CEH"), a non-profit corporation acting in the public interest, filed a complaint ("Complaint") titled *Center for Environmental Health v. Acme United Corporation., et al.*, San Francisco County Superior Court Case Number CGC-08-482792 (the "Action"), for civil penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* ("Proposition 65"). Becton, Dickinson and Company ("Defendant" or "BD") is named as a defendant in the Action. CEH and BD are collectively referred to herein as the "Parties," with each of them as a "Party."

1.2 BD is a corporation that employs 10 or more persons and manufactured, distributed and/or sold vinyl gloves in the State of California. As used in this Consent Judgment, "Products" refers to vinyl gloves manufactured, distributed and/or sold by BD.

1.3 Beginning on or about August 26, 2008, CEH served BD and the appropriate public enforcement agencies with the requisite 60-day notice (the "Notice") alleging that BD was in violation of Proposition 65. CEH's Notice and the Complaint in this Action allege that BD exposes people who use or otherwise handle the Products to di(2-ethylhexyl) phthalate ("DEHP"), a chemical known to the State of California to cause cancer, birth defects and other reproductive harm, without first providing clear and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity DEHP. The Notice and Complaint allege that BD's conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65. BD disputes such allegations and asserts that all of its Products are safe and comply with all applicable laws.

1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and personal jurisdiction over BD as to the acts alleged in CEH's Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter

this Consent Judgment as a full and final resolution of all claims which were or could have been raised in the Complaint based on the facts alleged therein.

1.5 The Parties enter into this Consent Judgment pursuant to a settlement of certain disputed claims between the Parties as alleged in the Complaint. By executing this Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

2. COMPLIANCE - REFORMULATION

2.1 Reformulation Standard - Removal of DEHP. Beginning 60 days after entry of this Consent Judgment (the "Compliance Date"), BD shall not manufacture for sale or distribution, distribute, ship, sell, or knowingly cause to be manufactured, distributed or sold, any Product that contains in excess of trace amounts of DEHP. For purposes of this Consent Judgment only, "in excess of trace amounts" is more than 600 parts per million ("ppm"). In reformulating the Products to remove DEHP, BD may not use butyl benzyl phthalate ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as "Listed Phthalates."

2.2 Certification from Suppliers. BD shall issue specifications to its suppliers of Products subject to Section 2.1, if any, requiring that such Products shall not contain DEHP or any other Listed Phthalate in excess of trace amounts. BD shall obtain written certification from its suppliers of the Products certifying that the Products do not contain DEHP in excess of trace amounts.

2.3 BD's Testing. In order to ensure compliance with the requirements of Section 2.1, BD shall cause to be conducted testing to confirm that Products subject to

Section 2.1, if any, do not contain any Listed Phthalate in excess of trace amounts. Testing shall be conducted in compliance with Section 2.1. All testing pursuant to this Section shall be performed by an independent laboratory in accordance with both of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the "Test Protocols"). At the request of CEH, the results of any required testing performed pursuant to this section shall be made available to CEH within a reasonable time on a confidential basis.

2.3.1 Testing Frequency. For each of the first two orders of Products purchased from each of BD's suppliers after the Compliance Date, BD shall randomly select and test one glove from each of the greater of 0.1% (one-tenth of one percent) or eight, but in no case more than ten, of the total boxes of Products purchased from each supplier of the Products intended for sale. Following the testing of the first two orders as described above, BD shall, for each subsequent order, randomly select and test one glove from each of the greater of 0.05% (one-twentieth of one percent) or four, but in no case more than five, of the total boxes of Products purchased in that calendar year for sale from each supplier of the Products.

2.3.2 Products That Contain Listed Phthalates Pursuant to BD's Testing. If the results of the testing required pursuant to Section 2.3 show Listed Phthalates in excess of trace amounts in a Product, BD shall: (1) refuse to accept all of the Products that were purchased under the particular purchase order; (2) send a notice to the supplier explaining that such Products do not comply with the suppliers' certification; and (3) apply the testing frequency set forth in Section 2.3.1 as though the next shipment from the supplier were the first one following the Compliance Date.

2.4 Confirmatory Testing by CEH. CEH intends to conduct confirmatory testing of the Products subject to Section 2.1, if any, at its own expense. Any such testing shall be conducted by CEH at an independent laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing demonstrates that the Products contain Listed Phthalates in excess of trace amounts subsequent to the Compliance Date, CEH shall inform BD of the test results, including information sufficient to permit BD to identify the Product(s). BD shall, within 30 days following such notice, provide CEH, at the address

listed in Section 11.1, with the certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If and only if BD fails to provide CEH with information demonstrating that it complied with Sections 2.2 and/or 2.3, as applicable, BD shall be liable for stipulated payments in lieu of penalties for Products for which CEH produces tests demonstrating the presence of Listed Phthalates in excess of trace amounts in the Products. The payments shall be made to CEH and used for the purposes described in Section 3.1.

2.4.1 Stipulated Payments In Lieu of Penalties. If stipulated payments in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows for each Occurrence of BD selling a Product containing Listed Phthalates in excess of trace amounts after the Compliance Date:

First Occurrence:	$500
Second Occurrence:	$750
Third Occurrence:	$1,000
Thereafter:	$2,500

In the event that BD provides information, in accordance with Section 2.4, that it believes demonstrates its compliance with Sections 2.2 and 2.3 of the Consent Judgment, and CEH disputes such a claim, CEH shall have the burden of demonstrating that stipulated penalties are warranted by proving noncompliance with Sections 2.2 and 2.3 by a preponderance of the evidence. As used in this Section 2.4.1, the sale of any number of Products from a single lot shall constitute an "Occurrence." As used in this Section 2.4.1, the sale of any number of Products from a single lot shall constitute an "Occurrence," provided however that if Products from more than one lot are tested, or are collected for testing, by or on behalf of CEH under Section 2.4 during the same Testing Period and are subject to stipulated penalties in this Section 2.4.1, all of those Products shall fall within a single Occurrence. As used this Section 2.4.1, a Testing Period refers to a period of 60 days or less.

2.5 Products in the Stream of Commerce. Any Products that have been manufactured, distributed, shipped, or sold, or that are otherwise in the stream of commerce prior to the Compliance Date shall be released from any claims that were brought or that could be brought by CEH in the Complaint, as though they were Covered Claims within the meaning of Section 7.1, below. As a result, the obligations of this Section 2 do not apply to such Products.

3. SETTLEMENT PAYMENTS

3.1 Penalty. BD shall pay to CEH $1,000 as a civil penalty pursuant to health and Safety Code §25249.7(b), which CEH will apportion pursuant to Health and Safety Code §25249.12.

3.2 Monetary Payment in Lieu of Penalty. BD shall pay to CEH $8,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4. The payment required under this section shall be made payable to CEH.

3.3 Attorneys' Fees and Costs. BD shall pay $18,000 to reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter to BD's attention, litigating and negotiating a settlement in the public interest. The payment required under this section shall be made payable to Lexington Law Group, LLP.

3.4 Delivery of Payments. The payments required under this Section 3 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 within 10 days of entry of this Consent Judgment.

4. MODIFICATION OF CONSENT JUDGMENT

4.1 This Consent Judgment may be modified by written agreement of CEH and BD, or upon motion of CEH or BD as provided by law. Grounds for such modification include, but are not limited to, any change in law that would (1) render Proposition 65 inapplicable to the Products or to DEHP or (2) establish a compliance standard that would

allow concentrations of DEHP and/or any Listed Phthalate in the Products to exceed 600 ppm without a Proposition 65 warning.

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 CEH may, by motion or application for an order to show cause, enforce the terms and conditions contained in this Consent Judgment. Should CEH prevail on any such motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with enforcing the Consent Judgment.

6. APPLICATION OF CONSENT JUDGMENT

6.1 This Consent Judgment shall apply to and be binding upon the Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

7. CLAIMS COVERED AND RELEASE OF CLAIMS

7.1 This Consent Judgment is a full, final and binding resolution between CEH and BD of any violation of Proposition 65 that was or could have been asserted in the Complaint against BD (including any claims that could be asserted in connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, divisions, directors, officers, employees, agents, attorneys, distributors, wholesalers, retailers, or customers (collectively, "Defendant Releasees") based on failure to warn about alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by BD ("Covered Claims") on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of exposures to Listed Phthalates from the Products.

8. SEVERABILITY

8.1 In the event that any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

9. GOVERNING LAW

9.1 The terms of this Consent Judgment shall be governed by the laws of the State of California.

10. RETENTION OF JURISDICTION

10.1 This Court shall retain jurisdiction of this matter to implement and enforce the terms this Consent Judgment.

11. PROVISION OF NOTICE

11.1 All notices required pursuant to this Consent Judgment and correspondence shall be sent to the following:

For CEH:

Mark N. Todzo
Lexington Law Group, LLP
1627 Irving Street
San Francisco, CA 94122

For BD:

Trenton H. Norris
Sarah Esmaili
Arnold & Porter, LLP
275 Battery Street, Suite 2700
San Francisco, CA 94111-3823

12. COURT APPROVAL

12.1 CEH will comply with the settlement notice provisions of Health and Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003. If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

13. EXECUTION AND COUNTERPARTS

13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

14. AUTHORIZATION

14.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the Party represented and legally bind that Party. The undersigned have read, understand and agree to all of the terms and conditions of this Consent Judgment. Except as explicitly provided herein, each Party is to bear its own fees and costs.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

_____ Dated: 10/5/07
Michael Green, Director
Center for Environmental Health

BECTON, DICKINSON AND COMPANY

_____ Dated: _____

_____
[Name]

_____
[Title]

14. AUTHORIZATION

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

Michael Green, Director
Center for Environmental Health

BECTON, DICKINSON AND COMPANY

Dated: Sept 29th 2009

Eric Borin
[Name]

V.P., U.S. Sales & Marketing
[Title]

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Becton, Dickinson and Company, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: NOV 24 2009

HAROLD KAHN

Judge, Superior Court of the State of California